

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

**Chapel Ridge West II, LP,
Oakview Terrace I, LP,
DM/Hickory Grove LLLP,**
Appellants,

v.

Polk County Board of Review,
Appellee.

ORDER

Docket No. 13-77-0748

Docket Nos. 13-77-0749 through 0762

Docket No. 13-77-0763

On July 14, 2014, the above-captioned appeals came on for hearing before the Iowa Property Assessment Appeal Board. The appeals were conducted under Iowa Code section 441.37A(2)(a-b) (2013) and Iowa Administrative Code rules 701-71.21(1) et al. Attorney Sean Moore of Brown, Winick, Graves, Gross, Baskerville & Schoenebaum, PLC, Des Moines, Iowa, represented the appellants Chapel Ridge West II, LP; Oakview Terrace I, LP; and DM/Hickory Grove, LLLP. Assistant County Attorney David Hibbard represented the Board of Review. The Appeal Board now, having examined the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

All of the properties on appeal are Section 42 apartment buildings or duplexes. Section 42 property is property that is leased or rented to low-income individuals and families as authorized by Section 42 of the Internal Revenue Code. Section 42 limits the amount that the individual or family pays for the rental or lease of units in the property. Iowa Code § 441.21(2).

Docket 13-77-0748 – Chapel Ridge West II is the owner of commercially classified property located at 210 S 41st Street, West Des Moines, Iowa.

Dockets 13-77-0749 through 0762 – Oakview Terrace I is the owner of thirteen parcels that comprise a single-campus on Boston Avenue and 30th Street in Des Moines, Iowa. It has eight duplex properties and a single-family property all classified residential, as well as 216 apartment units in thirteen buildings, all classified commercial.

Docket 13-77-0763 – DM/Hickory Grove is the owner of a commercially classified property located at 4010 E 42nd Street, Des Moines, Iowa.

The real estate was assessed as follows for January 1, 2013:

Docket	Parcel	Address	Description/Classification	2013 AV
13-77-0748	320/00779-510-002	241 S 42nd St., WDM	4 apartment buildings (96 units) 6.27 acres / Com	\$4,411,000
13-77-0749	080/01834-000-000	2733 Boston Ave., DM	1 Story Brick Duplex 0.215 acres / Res	\$57,300
13-77-0750	080/05860-011-000	2739 Boston Ave., DM	1 Story Brick Duplex 0.215 acres / Res	\$55,700
13-77-0751	080/05860-008-000	2747 Boston Ave., DM	1 Story Brick Duplex 0.213 acres / Res	\$57,100
13-77-0752	080/05860-007-000	2755 Boston Ave., DM	1 Story Brick Duplex 0.213 acres / Res	\$55,500
13-77-0753	080/05860-006-000	2801 Boston Ave., DM	1 Story Brick Duplex 0.213 acres / Res	\$57,100
13-77-0754	080/05860-005-000	2809 Boston Ave., DM	1 Story Brick Duplex 0.213 acres / Res	\$56,900
13-77-0755	080/05860-004-000	2817 Boston Ave., DM	1 Story Brick Duplex 0.213 acres / Res	\$56,900
13-77-0756	080/05860-003-000	2895 Boston Ave., DM	1 Story Brick Duplex 0.213 acres / Res	\$56,500
13-77-0757	080/05860-002-000	2901 Boston Ave., DM	1 Story Frame Single Family 0.257 acres / Res	\$128,000
13-77-0758	080/05860-001-000	2907 Boston Ave., DM	Apartment building (12 units) 0.675 acres / Com	\$321,800
13-77-0759	080/01839-000-000	3111 30th St., DM	Apartment building (16 units) 0.830 acres / Com	\$429,000
13-77-0760	080/01836-003-000	3201 30th St., DM	4 apartment buildings (66 units) 5.149 acres / Com	\$1,769,800
13-77-0761	080/01835-001-000	3201 30th St., DM	3 apartment buildings (90 units) 4.387 acres / Com	\$2,413,000
13-77-0762	080/01837-000-000	3201 30th St., DM	4 apartment buildings (32 units) 1.885 acres / Com	\$858,000
13-77-0763	060/08824-004-000	4010 E 42nd St., DM	Apartment building (40 units) 4.53 acres / Com	\$834,600

The appellants protested their assessments to the Polk County Board of Review on the ground that the properties were assessed for more than authorized by law under section 441.37(1)(a)(2). They asserted the correct assessed values of the three housing complexes are as shown in the following chart. (Appellants' br. p. 3).

Property	Correct Value
Chapel Ridge West II	\$2,975,692
Oakview Terrace	\$5,678,568
Hickory Grove	\$745,741

The Board of Review denied the protests. The appellants then appealed to this Board.

The appellants all timely filed a Section 42 reporting form with the Assessor's office for the 2013 assessment year. The form requested information related to the property's projected gross income (PGI), other income, and expenses from 2010-2012. The appellants completed the forms to arrive at normalized figures for 2013. Based on the normalized figures, the resulting NOI was divided by the capitalization rate provided by the Department of Revenue to determine the Section 42 value. The appellants assert the Assessor accepted all of the normalized figures for everything except the PGI. Instead of using the normalized PGI figure provided by the Appellants, the Assessor used the PGI for 2013 based on the projected 2013 rent rolls the appellants provided to the Assessor. The appellants assert this variance results in substantial differences between their asserted correct value and the 2013 assessments.

Bret Mills of Conlin Properties explained the Section 42 reporting forms for each of the housing complexes in this appeal were submitted to the Assessor's office. (Exhibit 2). Mills testified the information reported on the forms for the 2010-2012 reporting periods was obtained from "year-end financial reports" for each of the subject housing complexes. Because year-end financials were used, the reported numbers for these years would likely reflect the *actual rents received* rather than the PGI for those years. Mills explained that, in his experience, information from the three prior years is

averaged to determine the normalized figures for the current year. The reporting forms for the 2013 assessment year were all completed in this fashion.

After reviewing the appellants' forms for the 2013 assessment, the Assessor's office replaced the normalized number for the 2013 income with the reported PGI. (Exhibits E, J, and L). The Assessor obtained the PGI from rent-rolls attached to the appellants' forms. (Exhibits D, I, and K). The numbers reported by the appellants compared to those determined by the Assessor are as follows:

Property	2013 Income (Appellant)	2013 Income (Assessor)
Chapel Ridge West II	\$710,565	\$860,748
Oakview Terrace	\$1,701,855	\$1,758,588
Hickory Grove	\$262,985	\$272,277

The 2013 PGI's were the only numbers on the forms that were changed. Polk County Assessor Randy Ripperger testified that the PGI figures used reflect full rental and occupancy of all units. The Assessor considered all of the other information as submitted by the appellants.

Here, the main issue is which number should be used – the PGI for 2013 or the normalized figures provided by the appellants. While we find normalizing three years of PGI would be an acceptable method of developing the direct capitalization method to value the properties, we do not believe the appellants properly developed this method. Mills testified that the 2010, 2011, and 2012 PGI figures on the Section 42 reporting forms reflected the *actual* rents for those years. A comparison of the appellants' Section 42 forms (Exhibit 2) with the 2011 and 2012 rent rolls (Exhibits E, J, L), suggests the PGI figures shown on appellants' Section 42 forms are not the same as the total income as if all units are rented and occupied, the PGI contemplated by the rule. (Exhibit B). The following chart compares the rent rolls (Exhibits E, J, L) to the appellants' reported rent.

	Hickory Grove	Chapel Ridge West II	Oakview Terrace
2011			
PGI indicated by Rent Roll	\$251,568	\$803,004	\$1,750,716
PGI reported by Appellant	\$263,894	\$811,034	\$1,698,591
Difference	-\$12,326	-\$8,030	\$52,125
2012			
PGI indicated by Rent Roll	\$290,931	\$872,040	\$1,736,340
PGI reported by Appellant	\$269,441	\$852,290	\$1,732,140
Difference	\$21,490	\$19,750	\$4,200

With two exceptions, the PGI figure reported by the appellants understates the properties' actual PGI as if all units are rented and occupied. Each property shows the PGI was underreported on a net basis over the two-year period. It appears the appellants relied on the actual rents received which typically resulted in something less than the PGI as if all units are rented and occupied. While this alone may not be problematic, the appellants also made a separate deduction for vacancy and uncollected rent. Because it appears the appellants reported the actual rents, which would include vacancy, the appellants' NOI conclusions amount to a "double-dip." Thus, the NOI stated by the appellants underreports the properties' productive and earning capacity.

The appellants also urged this Board to consider that other jurisdictions, specifically Dallas County and Johnson County, accepted the forms as the appellants submitted them. First, we are without jurisdiction to consider the assessments on other properties owned by the appellants that are not under appeal. Moreover, Polk County is under no obligation to accept what it believes are incorrect filings simply because other jurisdictions may have done so.

Conclusion of Law

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board

determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin Cnty. Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986). In an appeal alleging the property is assessed for more than the value authorized by law under section 441.37(1)(a)(2), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995).

When assessing Section 42 property, the assessor shall value the property using “the productive and earning capacity from the actual rents received as a method of appraisal and shall take into account the extent to which that use and limitation reduces the market value of the property.” § 441.21(2).

Iowa Admin. Code r. 701-71.5(2) states:

the income approach to valuation shall be applied using the direct capitalization method . . . In applying the direct capitalization method, the assessor shall develop a normalized measure of annual NOI . . . utilizing (1) the actual rent schedule for each of the available units as of January 1 of the year of assessment indicating the actual rent to be paid by the resident plus any Section 8 rental assistance . . ., (2) a normal vacancy/collection allowance, (3) the prior year's actual and current year's projected annual operating expenses associated with the property . . ., and (4) an appropriate provision for replacement reserves.

The rule further states, “For properties that have attained a normalized operating history, the NOI results of the prior three years . . . may be used to provide the basis for determining the normalized NOI used for purposes of applying the direct capitalization method for the year of assessment.”

The appellants' argument is two-fold. First, they argue that r. 701-71.5(2) is inconsistent with the Iowa Code section 441.21 and is invalid and void. Second, they contend that even if the rule is valid, the Assessor did not apply it correctly to the subject properties.

The appellants argue section 441.21(2) requires the Assessor to value the property based on its productive and earning capacity from the *actual rents received*. (Appellant's Hearing br. p. 6-8) (emphasis added). In the appellants' view, the rule indicates the Assessor may use *projected rent* indicated by the rent rolls as of the assessment date; in this case, January 1, 2013. Because the statute states that actual rent must be used and the rule indicates the Assessor may use projected rents, the appellants argue the rule exceeds the scope of the underlying statute and is thereby void.

This proceeding is a contested case held pursuant to section 441.37A concerning the assessments of specific properties appealed under grounds available in section 441.37 and not a judicial review action challenging the validity of agency rulemaking under Chapter 17A. As a result, we hesitate to render an opinion on the validity of the rule. Further, any opinion is unnecessary here because we ultimately conclude the appellants have not established the correct valuation of the subject properties to meet their burden in this case. *Boekeloo*, 529 N.W.2d at 277.

The appellants' valuation methodology is premised on determining the normalized NOI based on property specific-data from 2010 through 2012. Establishing a normalized NOI for properties with a normalized operating history is permissible under r. 71.5(2) and appellants do not appear to challenge the validity of that provision. In calculating their normalized NOI, the appellants utilized the actual rents received during the three year time period. However, in addition to using the actual rents received, the appellants applied an allowance for vacancy and collection loss that reduced their effective gross income. In some cases, the vacancy and collection loss exceeded \$100,000 per year. This methodology effectively amounts to double-dipping and artificially reduces the NOI for the

properties. As a result, we find the normalized NOI developed by the appellants undervalues the properties' productive and earning capacity.

If the appellants double-dipping error is corrected by adding the respective normalized vacancy and collection loss to their normalized PGI, the results are as shown below. When compared to the projected 2013 rent used by the Assessor, the PGI values are roughly the same, with the exception of the Chapel Ridge West property. The Chapel Ridge West discrepancy may be due to unusually low rents in 2010, which would suggest the properties operating history may not be normal and a normalized valuation methodology should not be used.

	Hickory Grove	Chapel Ridge West II	Oakview Terrace
Appellants' Normalized actual rents	\$262,985	\$710,565	\$1,701,855
Normalized Vacancy and Collection Loss	\$11,820	\$61,783	\$103,747
Total	\$274,805	\$772,348	\$1,805,602
Assessor (2013 projected rent)	\$272,277	\$860,748	\$1,758,588

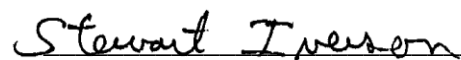
Although the appellants challenge the Assessor's use of the projected 2013 rent roll in establishing the properties' PGI, the Assessor's method inherently precludes the same form of double dipping. As a result, we find it is the best evidence in the record of the properties' productive and earning capacity.

THE APPEAL BOARD ORDERS the 2013 assessments of the Appellants' property as determined by the Polk County Board of Review are affirmed.

Dated this 19th day of August, 2014.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair



Jacqueline Rypma, Board Member

Copies to:

Sean P. Moore
Brown Winick Law Firm
666 Grand Avenue, Suite 2000
Des Moines, IA 50309-2510
ATTORNEY FOR APPELLANTS

David Hibbard
Assistant Polk County Attorney
111 Court Ave., Rm 340
Des Moines, IA 50309
ATTORNEY FOR APPELLEE